

Office of the Secretary, Interior

§ 4.26

(f) *Extensions of time.* (1) The time for filing or serving any document may be extended by the Appeals Board or other officer before whom the proceeding is pending, except for the time for filing a notice of appeal and except where such extension is contrary to law or regulation.

(2) A request for an extension of time must be filed within the time allowed for the filing or serving of the document and must be filed in the same office in which the document in connection with which the extension is requested must be filed.

[36 FR 7186, Apr. 15, 1971, as amended at 53 FR 49660, Dec. 9, 1988; 75 FR 64663, Oct. 20, 2010]

§ 4.23 Transcript of hearings.

Hearings will be recorded verbatim and transcripts thereof shall be made when requested by interested parties, costs of transcripts to be borne by the requesting parties. Fees for transcripts prepared from recordings by Office of Hearings and Appeals employees will be at rates which cover the cost of manpower, machine use and materials, plus 25 percent, adjusted to the nearest 5 cents. If the reporting is done pursuant to a contract between the reporter and the Department of the Interior Agency or office which is involved in the proceeding, or the Office of Hearings and Appeals, fees for transcripts will be at rates established by the contract.

§ 4.24 Basis of decision.

(a) *Record.* (1) The record of a hearing shall consist of the transcript of testimony or summary of testimony and exhibits together with all papers and requests filed in the hearing.

(2) If a hearing has been held on an appeal pursuant to instructions of an Appeals Board, this record shall be the sole basis for decision insofar as the referred issues of fact are involved except to the extent that official notice may be taken of a fact as provided in paragraph (b) of this section.

(3) Where a hearing has been held in other proceedings, the record made shall be the sole basis for decision except to the extent that official notice may be taken of a fact as provided in paragraph (b) of this section.

(4) In any case, no decision after a hearing or on appeal shall be based upon any record, statement, file, or similar document which is not open to inspection by the parties to the hearing or appeal, except for documents or other evidence received or reviewed pursuant to § 4.31(d).

(b) *Official notice.* Official notice may be taken of the public records of the Department of the Interior and of any matter of which the courts may take judicial notice.

[36 FR 7186, Apr. 15, 1971, as amended at 53 FR 49660, Dec. 9, 1988]

§ 4.25 Oral argument.

The Director or an Appeals Board may, in their discretion, grant an opportunity for oral argument.

§ 4.26 Subpoena power and witness provisions generally.

(a) *Compulsory attendance of witnesses.* The administrative law judge, on his own motion, or on written application of a party, is authorized to issue subpoenas requiring the attendance of witnesses at hearings to be held before him or at the taking of depositions to be held before himself or other officers. Subpoenas will be issued on a form approved by the Director. A subpoena may be served by any person who is not a party and is not less than 18 years of age, and the original subpoena bearing a certificate of service shall be filed with the administrative law judge. A witness may be required to attend a deposition or hearing at a place not more than 100 miles from the place of service.

(b) *Application for subpoena.* Where the file has not yet been transmitted to the administrative law judge, the application for a subpoena may be filed in the office of the officer who made the decision appealed from, or in the office of the Bureau of Land Management in which the complaint was filed, in which cases such offices will forward the application to the examiner.

(c) *Fees payable to witnesses.* (1) Witnesses subpoenaed by any party shall be paid the same fees and mileage as are paid for like service in the District Courts of the United States. The witness fees and mileage shall be paid by